

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Christina Vuong	Team: Team # 3	CCRB Case #: 201305354	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Sunday, 06/09/2013 5:40 PM	Location of Incident: Lexington Avenue and East 78th Street, en route to the 19th Precinct stationhouse	Precinct: 19	18 Mo. SOL 12/9/2014	EO SOL 12/9/2014	
Date/Time CV Reported Sun, 06/09/2013 11:24 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 06/13/2013 3:47 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Joseph Demarco	01347	911645	102 PCT
2. POM Ted Saintgerard	26747	934145	102 PCT
3. POM Jonathan Morales	21520	945258	102 PCT
4. Officers			Unknown
5. An officer			Unknown

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Jerry Garcia	02320	936643	GANG BS
2. POM Anthony Nevandro	30398	941091	GANG BS
3. POM Ryan Stigell	12424	951302	PBBX
4. POM James Joyce	21182	951856	PBBX
5. POM Alex Cruz	01608	940038	102 PCT
6. POM Christophe Harris	00768	943353	102 PCT
7. POM Carmine Semioli	14075	946633	102 PCT
8. POM Moises Roman	11974	942876	102 PCT
9. POM Kareem Phillips	02555	929558	SS QBSZ

Officer(s)	Allegation	Investigator Recommendation
A.SGT Joseph Demarco	Discourtesy: At East 78th Street and Lexington Avenue in Manhattan, Sgt. Joseph Demarco spoke rudely to § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
B.SGT Joseph Demarco	Off. Language: At East 78th Street and Lexington Avenue in Manhattan, Sgt. Joseph Demarco made remarks to § 87(2)(b) based upon race.	
C.SGT Joseph Demarco	Force: At East 78th Street and Lexington Avenue in Manhattan, Sgt. Joseph Demarco used physical force against § 87(2)(b)	
D.POM Jonathan Morales	Force: At East 78th Street and Lexington Avenue in Manhattan, PO Jonathan Morales used physical force against § 87(2)(b)	
E.POM Jonathan Morales	Force: At East 78th Street and Lexington Avenue in Manhattan, PO Jonathan Morales used pepper spray against § 87(2)(b)	
F.POM Jonathan Morales	Force: At East 78th Street and Lexington Avenue in Manhattan, PO Jonathan Morales struck § 87(2)(b) with an asp.	
G.POM Ted Saintgerard	Force: At East 78th Street and Lexington Avenue in Manhattan, PO Ted Saint-Gerard used physical force against § 87(2)(b)	
H. Officers	Force: At East 78th Street and Lexington Avenue in Manhattan, officers used physical force against § 87(2)(b) and § 87(2)(b)	
I. An officer	Discourtesy: En route to the 19th Precinct stationhouse, an officer spoke rudely to § 87(2)(b)	

## Case Summary

On June 9, 2013, § 87(2)(b) filed the following complaint via phone with the Internal Affairs Bureau (IAB). On June 13, 2013, the Civilian Complaint Review Board (CCRB) received this complaint from IAB under log number 2013-25158.

On June 9, 2013 at 5:20 p.m., Sgt. Joseph Demarco of the 102<sup>nd</sup> Precinct stopped § 87(2)(b) at East 78<sup>th</sup> Street and Lexington Avenue in Manhattan. A large crowd formed, and multiple units responded to the location. The following allegations resulted:

- **Allegation A- Discourtesy: At East 78th Street and Lexington Avenue in Manhattan, Sgt. Joseph Demarco spoke rudely to § 87(2)(b)**  
§ 87(2)(g)
- **Allegation B- Offensive Language: At East 78th Street and Lexington Avenue in Manhattan, Sgt. Joseph Demarco made remarks to § 87(2)(b) based upon race.**  
§ 87(2)(g)
- **Allegation C- Force: At East 78th Street and Lexington Avenue in Manhattan, Sgt. Joseph Demarco used physical force against § 87(2)(b)**
- **Allegation D- Force: At East 78th Street and Lexington Avenue in Manhattan, PO Jonathan Morales used physical force against § 87(2)(b)**
- **Allegation E- Force: At East 78th Street and Lexington Avenue in Manhattan, PO Jonathan Morales used pepper spray against § 87(2)(b)**
- **Allegation F- Force: At East 78th Street and Lexington Avenue in Manhattan, PO Jonathan Morales struck § 87(2)(b) with an asp.**
- **Allegation G- Force: At East 78th Street and Lexington Avenue in Manhattan, PO Ted Saint-Gerard used physical force against § 87(2)(b)**
- **Allegation H- Force: At East 78<sup>th</sup> Street and Lexington Avenue in Manhattan, officers used physical force against § 87(2)(b) and § 87(2)(b)**  
§ 87(2)(g)
- **Allegation I- Discourtesy: En route to the 19th Precinct stationhouse, an officer spoke rudely to § 87(2)(b)**  
§ 87(2)(g)

Because § 87(2)(b) and § 87(2)(b) filed a civil lawsuit regarding the incident, the complaint was ineligible for mediation.

## Results of Investigation

### Video Footage (encl. E1-3)

§ 87(2)(b) stated that his friend § 87(2)(b) posted a video of the incident on § 87(2)(b) under the user name § 87(2)(b). The video, entitled, § 87(2)(b),” is three minutes and fifteen seconds long. The video opens with Sgt. Joseph Demarco and PO Jonathan Morales of the 102<sup>nd</sup> Precinct, along with another uniformed officer pushing § 87(2)(b) from behind onto the ground outside of a Starbucks store. § 87(2)(b) is on his elbows with his arms under his chest. Sgt. Demarco’s knee is in § 87(2)(b)’s upper back. PO Morales is straddling § 87(2)(b)’s lower back and tries to pull out § 87(2)(b).

§ 87(2)(b) s right arm without success. At the 22-second mark, PO Morales is seen discharging pepper spray in § 87(2)(b) s face at least three times, after which he resumes pulling on § 87(2)(b) s right arm.

At the 1:15 minute mark, § 87(2)(b) is seen in the background speaking to PO Ted Saint-Gerard of the 102<sup>nd</sup> Precinct. At the 1:29 minute mark, PO Moises Roman of the 102<sup>nd</sup> Precinct is seen holding a flag and blocking the camera's view of § 87(2)(b). The scene is noisy and the crowd is hostile. § 87(2)(b) is heard continuously yelling in the background that there is no reason for the officers' actions.

At the 1:33 minute mark, a phone is seen dropping onto the ground and PO Christopher Harris of the 102<sup>nd</sup> Precinct bends over to pick it up. § 87(2)(b) rushes over and bends down, at which time PO Harris, PO Saint-Gerard, and an unidentified plainclothes black male officer in a white T-shirt grab § 87(2)(b) s arms. She appears to pull away from the officers, and PO Saint-Gerard and the plainclothes officer bring her against the Starbucks window. § 87(2)(b) then takes a few steps away from the window, pulling her elbow forward. Between the 1:52 and 1:56 minute mark, § 87(2)(b) is violently jerking back and forth, pulling the officers with her. At the 2:05 minute mark, § 87(2)(b) appears to break towards the crowd with two purses in her extended left hand. She squats down, after which PO Saint-Gerard grabs her around the waist and lifts her slightly as PO Harris attempts to grab the purses, which § 87(2)(b) maintains hold of. PO Harris then diverts his attention to the crowd behind him. Female voices are heard saying, "§ 87(2)(b) relax, calm down." PO Saint-Gerard places her against the Starbucks window, and is assisted by the plainclothes officer in the white shirt, and another unidentified plainclothes black male officer with glasses in a red shirt, who grab her hands. At the 2:50 minute mark, she appears to be handcuffed.

§ 87(2)(b) alluded to another Youtube video that depicted a separate incident involving her friend "§ 87(2)(b) identified by the investigation as § 87(2)(b) which she did not witness. The investigation located the § 87(2)(b) video, entitled "§ 87(2)(b) ?," posted by § 87(2)(b) user "§ 87(2)(b). The video shows § 87(2)(b) standing halfway down the East 77<sup>th</sup> Street 6 train subway station stairs blocking pedestrian traffic and arguing with other passengers when approached by four unidentified uniformed officers and a white-shirted officer of an unknown command. § 87(2)(b) is simultaneously grabbed by an unidentified man and woman from below him, while he is being pulled up the stairs by the white-shirted officer and another officer. Two other officers then reach for § 87(2)(b) upper torso. It is unclear whether they are trying to grab his body or are pushing him. § 87(2)(b) then falls down the stairs.

### **Civilian Statements:**

#### **Complainant/Victim:** § 87(2)(b)

- § 87(2)(b)

#### **Statements to Medical Personnel** (encl. K1-15)

On § 87(2)(b), § 87(2)(b) reported to § 87(2)(b) personnel that he was assaulted by NYPD officers. He complained of multiple bruises and abrasions to his right thigh and both arms. He also complained of burning to the face and eyes.

#### **Photos** (encl. E9-11)

§ 87(2)(b) provided several photos taken on June 9, 2013 depicting deep bruises to the side of his right thigh, bruises to his left upper arm and right forearm, and scratches to his back, arms, and wrists.

#### **Statement to the IAB Command Center** (encl. D1-2)

On June 9, 2013, § 87(2)(b) alleged that an officer identified by the investigation as Sgt. Demarco told him to "get the fuck out of the street," and along with an officer identified by the investigation as PO Morales, brought him to the ground. He stated that the officers hit him with asps and

pepper sprayed him seven times. He stated that he crossed his hands when officers removed their handcuffs.

**Notice of Claim** (encl. E21-23)

On June 26, 2013, § 87(2)(b) filed a Notice of Claim against the City of New York, claiming false arrest, assault and battery, abridgment of freedom of speech, and negligence, and seeking unspecified monetary compensation.

**CCRB Statement** (encl. E4-14)

On June 28, 2013, § 87(2)(b) provided a statement to the CCRB.

On June 9, 2013 at 5:20 p.m., the Puerto Rican Day Parade had ended and § 87(2)(b) and 12 of his family and friends, including his wife § 87(2)(b) his friend § 87(2)(b) s mother and the godmother to § 87(2)(b) s daughter § 87(2)(b) and his friend § 87(2)(b) were walking along Lexington Avenue in Manhattan towards the East 77<sup>th</sup> Street 6 train subway station, as were many other parade-goers. At the southwest corner of East 78<sup>th</sup> Street and Lexington Avenue, he stepped off the curb, stopped, waved a large Puerto Rican flag for two seconds at his friends across the street, and then walked across the street. He did not remember the color of the traffic light.

In the middle of the crosswalk, he heard an officer identified by the investigation as Sgt. Demarco say behind him, “Get the fuck off the street,” and push him forward on his back. § 87(2)(b) described Sgt. Demarco as a 5’8” to 5’9” tall, 240-lb uniformed white man with brown hair and chevron stripes on his sleeve. A 6’ tall, dark-skinned uniformed Hispanic man in his early 30s, identified by the investigation as PO Morales was nearby.

§ 87(2)(b) told Sgt. Demarco that he could not put his hands on him. Sgt. Demarco told § 87(2)(b) to get out of the street. § 87(2)(b) rejoined his group in front of the Starbucks located at the southeast corner of the intersection. Sgt. Demarco grabbed him by the shoulder. § 87(2)(b) told Sgt. Demarco that he would report him. PO Morales took the Puerto Rican flag from § 87(2)(b) Sgt. Demarco told § 87(2)(b) to follow them to the corner, where the officers would summons him.

§ 87(2)(b) followed Sgt. Demarco. § 87(2)(b) started recording the incident using his cell phone. § 87(2)(b) had taken three to four steps when PO Morales kicked the back of § 87(2)(b) s knees and pushed him on his shoulder and back, causing § 87(2)(b) to fall to the ground. As he fell, he brought both of his hands from behind his back and crossed them in front of his chest to break his fall.

Sgt. Demarco had a knee in § 87(2)(b) s back, compressing his arms underneath his chest. The crowd, which was of an unknown size, started screaming indiscernible statements. § 87(2)(b) screamed that he could not breathe, that he was asthmatic, and asked the officers why he was being arrested. Within two seconds, PO Morales discharged pepper spray into his face. Five seconds later, PO Morales discharged a second spray. § 87(2)(b) s eyes were tearing and he started to wheeze. He turned his face to the ground, and felt an additional four or five sprays discharged in succession around his face.

PO Morales expanded his asp and struck § 87(2)(b) on the lateral side of his right thigh. After the third strike, PO Morales said, “I’m going to continue hitting you until you give up your hands.” Sgt. Demarco said, “Don’t hit him no more. Just tase him.” § 87(2)(b) was frightened and wiggled his body to remove his arms one by one. As he brought his right arm behind his back, PO Morales struck § 87(2)(b) across his right arm. § 87(2)(b) was struck with an asp five times, each blow within seconds of the last.

§ 87(2)(b) was handcuffed and taken to a marked NYPD van. Because of the pepper spray effects, he was unable to see the scene around him. In the van, he was seated next to “§ 87(2)(b),” a 5’6” tall thin black man, identified by the investigation as § 87(2)(b) Inside the van, § 87(2)(b) told the driver and passenger, whom he could not see or describe, identified by the investigation as PO Ryan Stigell and PO James Joyce of Patrol Borough Bronx, that he needed oxygen and to wipe his face. PO3, the unidentified officer sitting in the front passenger’s seat, said that they would arrive at the stationhouse soon. § 87(2)(b) attempted to wipe his face on the seat in front of him. PO3 reached around and pushed

§ 87(2)(b) by his forehead back against the headrest. § 87(2)(b) asked the officers to take out the asthma pump in his pocket. PO3 responded, “No, fuck you. You have to wait.”

At the 19<sup>th</sup> Precinct stationhouse, Emergency Medical Services personnel were awaiting § 87(2)(b). They cleaned § 87(2)(b)'s face and help him administer his asthma pump. § 87(2)(b) refused to fill out any EMS paperwork. Soon afterwards, PO Stigell issued § 87(2)(b) a summons for disorderly conduct, and he was released from the stationhouse at 7 p.m. Soon after, § 87(2)(b) went to § 87(2)(b) for asthma and pain.

§ 87(2)(a) Gen. Mun. § 50-h(3)

**Victim:** § 87(2)(b)

- § 87(2)(b)

**Statements to Medical Personnel** (encl. K16-29)

On June 10, 2013, § 87(2)(b) complained to § 87(2)(b) personnel of pain to her upper back, right shoulder, and arms following assault by officers the day prior.

**Notice of Claim** (encl. E24-26)

On June 26, 2013, § 87(2)(b) filed a Notice of Claim against the City of New York, which was consistent with § 87(2)(b)'s.

**CCRB Statement** (encl. E15-20)

On June 28, 2013, § 87(2)(b) provided an in-person statement at the CCRB. She generally corroborated § 87(2)(b)'s statement. Relevant additions are noted below.

§ 87(2)(b)'s niece § 87(2)(b) and a family friend “Steve,” identified by the investigation as § 87(2)(b) were part of the group. § 87(2)(b) did not know § 87(2)(b)'s contact information. She later learned that § 87(2)(b) was pushed down subway stairs, which she did not see.

A white officer who § 87(2)(b) could not describe identified by the investigation as Sgt. Demarco, called § 87(2)(b) a “fucking spic.” She did not hear any officer use other profanity.

Six or seven unidentified officers were telling the crowd to back up. § 87(2)(b) was three or four feet away from § 87(2)(b) when he was on the ground. § 87(2)(b) had her phone in hand and two purses on her shoulder. Her phone fell from her hand onto the ground two feet away. She reached for her phone when her hands were grabbed by two uniformed black officers, identified by the investigation as PO Saint-Gerard and PO Harris. PO4 and PO5, two unidentified tall black male plainclothes officers, one wearing a red shirt and one wearing a white shirt, ran over. § 87(2)(b) and § 87(2)(b) stood at the edge of the sidewalk, asking what was happening and to get § 87(2)(b)'s belongings. The women continued to ask why, “I want to know why.” § 87(2)(b) saw an unidentified officer grab § 87(2)(b)'s bicep, which resulted in a bruise.

§ 87(2)(b) stated that PO Harris was involved, § 87(2)(g). PO Saint-Gerard, PO4, and PO5 grabbed § 87(2)(b) and pushed her against the Starbucks glass window. She kept asking why she was getting arrested. The officers were unable to grab hold of § 87(2)(b)'s right hand, which was holding onto her two purses' shoulder straps. She tried to hand the purses to § 87(2)(b) but the officers kept pushing § 87(2)(b) to the side.

§ 87(2)(b) stated that PO4 grabbed her around her waist and tried to pick her up and swing her side to side. Based on the video, the investigation determined that PO Saint-Gerard did this. Because she was wearing white pants and did not want them to get dirty on the ground, she “held her feet” down. She was somehow able to extend her hand and successfully hand the purse to her niece or daughter. After this, she allowed the officers to grab her other arm and handcuff her. She was taken around the corner where her handcuffs were removed and she was told to cross the street and leave.

§ 87(2)(a) Gen. Mun. § 50-h(3)

**Victim:** § 87(2)(b)

- § 87(2)(b) is a § 87(2)(b) daughter.

**Phone Statement** (encl. E159)

On October 24, 2013, § 87(2)(b) was contacted by phone and stated that unidentified officers grabbed her arm after she protested their actions towards § 87(2)(b) and § 87(2)(b). She witnessed the incident involving § 87(2)(b) but refused to provide his contact information. She missed her scheduled appointment on November 6, 2013 and did not respond to subsequent contact attempts to reschedule.

**Witness:** § 87(2)(b)

- Pedigree information for § 87(2)(b) also known as § 87(2)(b) is unknown. He is § 87(2)(b)'s friend.

**Phone Statement** (encl. E156-157)

On August 13, 2013, § 87(2)(b) provided a phone statement to the CCRB. He generally corroborated § 87(2)(b) and § 87(2)(b)'s statements. Relevant additions are noted below. He missed his scheduled appointment and did not respond to subsequent contact attempts to reschedule.

§ 87(2)(b) was waving a flag in the middle of the street, herding the crowd across. Sgt. Demarco pushed § 87(2)(b) and told him to “hurry the fuck up, you’re moving too fucking slow.” § 87(2)(b) did not hear any officer say, “spic.” He noted it was unlikely because most of the officers were Hispanic.

§ 87(2)(b) asked an officer he identified from his nameplate as “PO Romero,” identified by the investigation as PO Moises Roman of the 102<sup>nd</sup> Precinct, to take § 87(2)(b)'s flag. PO Roman replied, “Fuck you, get out of here.”

§ 87(2)(b) did not see the incident involving § 87(2)(b) whose contact information he did not know.

**Witness:** § 87(2)(b)

- § 87(2)(b) a § 87(2)(b)
- She is § 87(2)(b)'s godsisiter and § 87(2)(b)'s niece.

**CCRB Statement** (encl. E144-149)

On August 21, 2013, § 87(2)(b) provided an in-person statement at the CCRB. She generally corroborated § 87(2)(b) and § 87(2)(b)'s statements. Relevant additions are noted below.

§ 87(2)(b) saw three or four uniformed officers surrounding § 87(2)(b) in a semicircle on the sidewalk by Starbucks several feet behind her. Sgt. Demarco repeatedly asked § 87(2)(b) to provide his ID. § 87(2)(b) continued walking away and saying that he did not do anything.

§ 87(2)(b) approached a black officer identified by the investigation as PO Saint-Gerard to ask what was happening. They were standing close to each other. PO Saint-Gerard looked past her and ignored her. PO Saint-Gerard nudged her in the stomach with his forearm, causing her to take a step back. She was upset and yelled that she was pregnant. Within a few seconds, PO Saint-Gerard nudged her again in the stomach. He never made eye contact with § 87(2)(b) or gave any indication he heard her.

§ 87(2)(b) attempted to pull § 87(2)(b) away from the officers, at which point unidentified officers § 87(2)(b) could not describe grabbed § 87(2)(b) by the arm and pushed her to the side.

**Witness:** § 87(2)(b)

- § 87(2)(b) § 87(2)(b)
- § 87(2)(b) *presently resides in South Carolina.*

**Phone Statements** (encl. E150-155)

On December 30, 2013, § 87(2)(b) provided a phone statement to the CCRB. On March 5, 2014, he was interviewed over the phone, but has since failed to return the verification statement form.

§ 87(2)(b) did not know § 87(2)(b)'s name, but they were neighborhood acquaintances and had gone to the parade together in a large group. The group shouted Puerto Rican Day-related statements as they crossed the street. The traffic light was green, but traffic had stopped to allow the group to cross.

§ 87(2)(b) heard Sgt. Demarco say to § 87(2)(b) "Get the fuck off the street."

A 5'7" tall, 180-lb uniformed Hispanic male officer, identified by the investigation as PO Roman, grabbed the Puerto Rican flag that § 87(2)(b) was holding and said that it was a potential weapon. PO Roman instructed § 87(2)(b) to move approximately eight times over the course of five minutes. § 87(2)(b) repeated that he would not leave until he got his flag back. After the eighth directive, § 87(2)(b) walked away. Up to fifteen unidentified plainclothes and uniformed officers he could not describe came up behind him, pushing him on his back and telling him to keep on moving.

An unidentified plainclothes officer yelled, "Arrest him." Six or seven officers § 87(2)(b) could not describe pushed him against a storefront and onto the ground. An unknown number of officers he could not see or describe punched him seven to ten times in his back, legs, stomach, and up to ten times in the face. He was also kicked several times on his stomach and legs. He was then pepper-sprayed twice by an unknown officer. § 87(2)(b) curled up in the fetal position and covered his body. It took five minutes for him to be handcuffed. He sustained scrapes to his face and body from hitting the ground.

Four white or Hispanic male officers he could not describe further, due to the pepper spray effects, were inside the van with him and § 87(2)(b). He did not hear any officer use profanity towards § 87(2)(b) whom he believed § 87(2)(b) passed out in the van. § 87(2)(b) screamed that the mace was hurting him. The front passenger instructed § 87(2)(b) to "shut the fuck up."

§ 87(2)(b) was issued a disorderly conduct summons by an officer identified by the investigation as PO James Joyce of Patrol Borough Bronx, whom he did not recognize from the incident.

**Witness:** § 87(2)(b)

- § 87(2)(b) *s pedigree information is unknown.* § 87(2)(b)

**Phone Statement** (encl. E158)

On September 11, 2013, § 87(2)(b) was contacted by phone.

§ 87(2)(b) did not exit the store because of safety concerns due to the riot outside. He could not hear anything outside. § 87(2)(b) observed an older woman identified by the investigation as



§ 87(2)(b) moving her hands and fighting with plainclothes officers trying to take her down to the ground in a fashion he did not recall. He did not see § 87(2)(b)'s interaction with the officers.

### **Attempts to Contact Civilians**

The investigation was able to reach a disposition regarding the allegations without a statement from § 87(2)(b)'s wife. Therefore, she was not interviewed.

§ 87(2)(b) and § 87(2)(b) were unable to provide § 87(2)(b) contact information.

Two please call letters were mailed to § 87(2)(b) address, as listed on his arrest worksheet. A search of the Queens Cole Directory and Lexis-Nexis database confirmed that members of the § 87(2)(b) family resided at this address, but was negative for any connected phone numbers. A search of the New York State Department of Motor Vehicles database revealed a different address for § 87(2)(b) but when cross-referenced with the Lexis-Nexis results, the second address was no longer current.

Two please call messages were sent via § 87(2)(b) to users "§ 87(2)(b) who posted the § 87(2)(b) " video, and "§ 87(2)(b) who left a comment on the video that he was the victim. No responses were received.

A search of the Complaint Tracking System was negative for prior complaints filed by § 87(2)(b) or duplicates of this incident. As of the date of this report, none of the letters were returned to the CCRB by the United States Postal Service as undeliverable.

A check of the New York City Department of Correction website showed that as of the writing of this report, § 87(2)(b) and § 87(2)(b) are not presently incarcerated and have not contacted the CCRB to schedule a verified statement.

### **Officer Statements:**

#### **Subject Officer: SGT. Joseph Demarco (102<sup>nd</sup> Precinct)**

- *Sgt. Demarco, a § 87(2)(b)*
- *On June 9, 2013, Sgt. Demarco worked from 6:40 a.m. to 6:32 p.m. He was assigned to the Puerto Rican Day Parade detail as a post supervisor. Sgt. Demarco was dressed in uniform.*

#### **Memo Book** (encl. F1-3)

Sgt. Demarco made a detailed memo book entry that was consistent with his CCRB statement.

#### **CCRB Statement** (encl. F4-6)

On October 8, 2013, Sgt. Demarco provided a statement at the CCRB.

On June 9, 2013 at 5:20 p.m., Sgt. Demarco was at his Puerto Rican Day Parade footpost on East 77<sup>th</sup> Street and Lexington Avenue in Manhattan when he observed a man identified by the investigation to be § 87(2)(b) and a group of five to ten people walking diagonally across Lexington Avenue at East 78<sup>th</sup> Street. § 87(2)(b) would walk, stop, yell indiscernible statements, and wave a large flag, causing cars to swerve around him and honk. Three or four unidentified Anti-Crime officers from a command Sgt. Demarco did not recall approached § 87(2)(b). Sgt. Demarco was too far away to hear the conversation. He called for assistance over the radio because of the large group of civilians.

Sgt. Demarco and several officers assigned to his post walked over. Sgt. Demarco asked § 87(2)(b) multiple times for ID, intending to issue a disorderly conduct summons. § 87(2)(b) refused to produce ID. Sgt. Demarco did not personally say or hear any officer say, "Get the fuck off of the street" or refer to § 87(2)(b) as a "spic." He did not see any officer push § 87(2)(b).

An officer identified by the investigation as PO Morales told § 87(2)(b) to place his arms behind his back. § 87(2)(b) did not comply, and “a struggling match” ensued. § 87(2)(b) was strong and heavily built. Sgt. Demarco reached behind § 87(2)(b) to grab his hands, but § 87(2)(b) flared his hands and was possibly spitting. Sgt. Demarco issued several directives to calm down. An officer identified by the investigation as PO Morales discharged pepper spray an unknown number of times. § 87(2)(b) was then brought to the ground in an unknown fashion by three unidentified officers, two of whom were identified by the investigation as Sgt. Demarco and PO Morales.

Several unidentified hostile crowd members attempted to get between the officers to § 87(2)(b). There were several pockets of fights that Sgt. Demarco could not describe around him. Unidentified officers conducted crowd control. No officer used profanity towards or pushed any crowd member.

On the ground, § 87(2)(b) continued yelling and clenching his arms, refusing to release his hands. Sgt. Demarco did not know if § 87(2)(b) was pepper sprayed after he was on the ground. He could not describe the type of physical force used against § 87(2)(b) or if an officer punched, kicked, or kned § 87(2)(b). He did not see any officer strike § 87(2)(b) with an asp. Eventually, § 87(2)(b) released his hands to be handcuffed. Unidentified 19<sup>th</sup> Precinct officers transported § 87(2)(b) to the stationhouse.

Sgt. Demarco viewed the § 87(2)(b)'s video and confirmed that he is the sergeant kneeling by § 87(2)(b)'s head. It did not add to his recollection of the incident. He did not recognize any other officers.

**Subject Officer: PO JONATHAN MORALES (102<sup>nd</sup> Precinct)**

- *PO Morales, a § 87(2)(b),*
- *On June 9, 2013, PO Morales worked from 6:40 a.m. to 8:30 p.m. He was assigned to the Puerto Rican Day Parade. He was dressed in uniform and worked on foot.*

**Memo Book** (encl. F7-8)

At 5:28 p.m., PO Morales responded to a call for assistance on East 78<sup>th</sup> Street and Lexington Avenue regarding a disorderly group.

**CCRB Statement** (encl. F9-11)

On November 4, 2013, PO Morales provided a statement to the CCRB. He generally corroborated Sgt. Demarco's statement. Relevant additions are noted below.

PO Morales could not identify the initial set of officers who approached § 87(2)(b). PO Morales did not hear anyone use profanity in that exchange. § 87(2)(b) waved his Puerto Rican flag at an officer identified by the investigation as Sgt. Demarco, almost hitting him in the face. PO Morales heard Sgt. Demarco ask for ID, and started to walk over with other unidentified officers.

While trying to grab § 87(2)(b)'s hands, PO Morales, § 87(2)(b) and other officers tripped to the ground. The crowd surrounded them, and the other officers kept them back, leaving only PO Morales and Sgt. Demarco to struggle with § 87(2)(b) by grabbing his arms. He did not say nor hear any other officers say to the crowd, “Get the fuck back.”

After an unknown period of time, PO Morales was still unable to pull § 87(2)(b)'s hands out from under him, despite numerous directives. Fearing that § 87(2)(b) could be reaching for something at his waistband, he discharged his pepper spray into § 87(2)(b)'s face an unknown number of times. § 87(2)(b)'s hands remained under his chest and his clenching tightened, and he kept reaching further. Because the pepper spray was ineffective, PO Morales stood up and struck § 87(2)(b) once on the muscular portion of § 87(2)(b)'s leg with his asp. PO Morales denied punching, kicking, kneeling § 87(2)(b) or seeing another officer do so. After one strike, § 87(2)(b) freed his hands to be handcuffed.

PO Morales did not know who transported § 87(2)(b) to the stationhouse.

There was “a sea” of officers around, dealing with the crowd of 100 individuals. He did not notice any women in the crowd interact with any officers.

PO Morales viewed § 87(2)(b)'s video, but it did not add to his recollection of the incident. He could not identify the plainclothes officers engaging with § 87(2)(b).

**Subject Officer: PO TED SAINT-GERARD (102<sup>nd</sup> Precinct)**

- *PO Saint-Gerard, a § 87(2)(b),*
- *On June 9, 2013, PO Saint-Gerard worked from 6:40 a.m. to an unspecified time. He was assigned to the Puerto Rican Day Parade. He was dressed in uniform and worked on foot.*

**Memo Book** (encl. F12-14)

At an unspecified time, PO Saint-Gerard responded to a call for assistance on East 78<sup>th</sup> Street and Lexington Avenue.

**CCRB Statement** (encl. F15-17)

On November 4, 2013, PO Saint-Gerard provided a statement to the CCRB. His statement was generally consistent with Sgt. Demarco and PO Morales'. Relevant additions are noted below.

PO Saint-Gerard interacted with the crowd. PO Saint-Gerard did know if he heard any officer use the word "fuck" or "spic." PO Saint-Gerard extended his asp in front of him to keep back the crowd members, who were pushing against him. He recalled interacting with female civilians, but was unable to elaborate. PO Saint-Gerard recalled someone had dropped a phone and a woman identified by the investigation as § 87(2)(b) kicked the phone, almost striking PO Harris, who was trying to pick up the phone, in the face. PO Saint-Gerard broke away from the crowd and assisted unidentified plainclothes officers in apprehending her. § 87(2)(b) kept turning her body the other way, preventing her hands from being grabbed. No force was used against her apart from her hands being grabbed. The struggle lasted 10 seconds, and plainclothes officers removed her from the scene.

PO Saint-Gerard viewed § 87(2)(b)'s video, but made no additions to his statement.

**Witness Officer: PO MOISES ROMAN (102<sup>nd</sup> Precinct)**

- *PO Roman, a § 87(2)(b),*
- *On June 9, 2013, PO Roman worked from 6:40 a.m. to 8:25 p.m. He was assigned to the Puerto Rican Day Parade detail, and was assigned to a footpost at East 78<sup>th</sup> Street and Lexington Avenue.*

**Memo Book** (encl. F35-37)

At 5:40 p.m., PO Roman noted that an individual was arrested by an unspecified command.

**CCRB Statement** (encl. F38-40)

On April 17, 2014, PO Roman provided a statement to the CCRB. He generally corroborated Sgt. Demarco, PO Morales, and PO Saint-Gerard's statements. Relevant additions are noted below.

PO Roman, Sgt. Demarco, PO Morales, and PO Saint-Gerard approached § 87(2)(b). PO Roman denied using or hearing any profanity, or hearing any officer refer to § 87(2)(b) as a "spic."

PO Roman had § 87(2)(b)'s flag, but did not know how he came to possess it.

PO Roman did not see any of his partners make physical contact with or use profanity towards the crowd members. He only observed § 87(2)(b)'s apprehension.

PO Roman was shown § 87(2)(b)'s video but it did not refresh his recollection of the incident.

**Witness Officers: PO RYAN STIGELL and PO JAMES JOYCE (Patrol Borough Bronx)**

- *PO Stigell, a § 87(2)(b) [REDACTED].*
- *On June 9, 2013, PO Stigell worked from 7:40 a.m. to 9:00 p.m. He was assigned to a footpost at East 78<sup>th</sup> Street and Madison Avenue. He was dressed in uniform.*
- *PO Joyce, a § 87(2)(b) [REDACTED].*
- *On June 9, 2013, PO Joyce worked from 7:40 a.m. to 9:00 p.m. PO Joyce was assigned to a footpost at East 77<sup>th</sup> Street and Madison Avenue. He was dressed in uniform.*

**Memo Books** (encl. F18-19, F24-25)

Both officers made detailed memo book entries consistent with their CCRB statements.

§ 87(2)(b) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**CCRB Statements** (encl. F22-23, F28-30)

On September 20, 2013 and April 1, 2014, PO Stigell and PO Joyce provided statements to the CCRB, summarized below.

PO Stigell and PO Joyce responded to the call for assistance at the incident location from their respective footposts. Approximately 100 uniformed and plainclothes officers of unknown commands were at the scene. They did not hear any officer use profanity or refer to § 87(2)(b) [REDACTED] as a “spic.”

PO Stigell corroborated § 87(2)(b) [REDACTED]’s verbal and physical resistance, but did not witness any of the force allegations. He did not recall the extent of his participating in § 87(2)(b) [REDACTED]’s apprehension. PO Joyce assisted 10 to 15 officers surrounding § 87(2)(b) [REDACTED]. He was by § 87(2)(b) [REDACTED]’s right shoulder pulling at his hands. PO Joyce did not personally or see any other officer punch, kick, or knee § 87(2)(b) [REDACTED]. He did not observe any officer wield an asp. He smelled but did not see pepper spray discharged, after which § 87(2)(b) [REDACTED] was handcuffed without further incident.

PO Joyce and PO Stigell did not see any other individual’s arrest. They did not see any officers interact with female civilians.

PO Stigell stated that § 87(2)(b) [REDACTED] and § 87(2)(b) [REDACTED] were placed in the back of van #8830 and transported back to the 19<sup>th</sup> Precinct stationhouse by PO Stigell and another unidentified officer who PO Stigell could not recall. PO Stigell believed he was the driver. § 87(2)(b) [REDACTED] stated in the van that he had asthma, and PO Stigell responded that they would get him medical attention. PO Stigell did not recall having any other interaction with § 87(2)(b) [REDACTED]. He did not know if the other officer interacted with § 87(2)(b) [REDACTED] or pushed § 87(2)(b) [REDACTED]’s face or had any other physical contact inside the van.

PO Joyce stated that he drove a van with four or five other officers he could not identify with § 87(2)(b) [REDACTED] and § 87(2)(b) [REDACTED] in the back. En route to the stationhouse, he did not recall any interaction with any prisoner and denied making physical contact with any prisoner. PO Joyce stated that typically in the van, there are officers in the row behind him, and in the second row behind him are the prisoners. PO Joyce did not recall hearing any profanity used and did not see any officer push a prisoner in the face.

At the 19<sup>th</sup> Precinct stationhouse, an unidentified supervisor instructed PO Stigell to release § 87(2)(b) [REDACTED] with a summons, and for PO Joyce to issue a summons to § 87(2)(b) [REDACTED].

PO Stigell and PO Joyce viewed § 87(2)(b) [REDACTED]’s video but did not recognize themselves. It did not refresh their recollections of the incident.

**Witness Officer: PO KAREEM PHILLIPS (School Safety Task Force)**

- *PO Phillips, a § 87(2)(b) [REDACTED]*
- *His shield number is “2555.”*
- *On June 9, 2013, PO Phillips worked from 12:45 p.m. to 9:20 p.m. with PO Canisius Xavier and they were assigned to the Occupy Wall Street detail. They were dressed in uniform and working on foot.*

**Memo Book** (encl. F31-32)

At 2:00 p.m., PO Phillips arrived at Worth Street and Lafayette Street. At 5:00 p.m., he marked normal conditions at his post.

**CCRB Statement** (encl. F33-34)

On December 10, 2013, PO Phillips provided a statement to the CCRB. At the time of the incident, he was assigned to an Occupy Wall Street detail at Lafayette and Worth Streets in Manhattan.

**Medical Records:** (encl. K1-29):

- At § 87(2)(b) [REDACTED] § 87(2)(b) [REDACTED] was diagnosed a sprain and strain of his wrist, elbow, and forearm, and with multiple contusions of his right wrist, forearm, left upper arm, and his right thigh. He was prescribed ibuprofen for pain management.
- At § 87(2)(b) [REDACTED] § 87(2)(b) [REDACTED] was diagnosed with small contusions of both upper arms and forearms. She was directed to apply ice to the areas.

**NYPD Documents:**

**SPRINT Report #§ 87(2)(b) [REDACTED] and #§ 87(2)(b) [REDACTED]** (encl. G1-6)

At 5:30 p.m., an unspecified unit requested additional units at Lexington Avenue and East 78<sup>th</sup> Street for large crowd conditions. Over the next minute, the dispatcher continued asking for more units to respond. At 5:32 p.m., a Gang Squad Brooklyn North unit stated that no further units were needed. Additional unspecified units requested to “slow it down” over the next two minutes. At 5:38 p.m., Sgt. Demarco requested Emergency Medical Services personnel to respond to the 19<sup>th</sup> Precinct stationhouse. He noted two arrests were made. At 5:51 p.m., a 19<sup>th</sup> Precinct Anti-Crime unit requested a caged car to the location. The SPRINT report did not note the vehicle number of the responding unit.

**Puerto Rican Day Parade Detail Roster** (encl. G26-51)

An extensive review of only the detail rosters covering Lexington Avenue to Fifth Avenue, from East 73<sup>rd</sup> to East 85<sup>th</sup> Street, revealed the following commands as active: Patrol Borough Bronx, 48<sup>th</sup> Precinct, Detective Bureau, Organized Crime Control Bureau, 69<sup>th</sup> Precinct, Property Clerk, Transit Bureau Districts 3, 4, 20, 32, and 34, Transit Bureau Brooklyn Task Force, 105<sup>th</sup> Precinct, 106<sup>th</sup> Precinct, Narcotics Borough Bronx, Fleet Services Division, 102<sup>nd</sup> Precinct, and 103<sup>rd</sup> Precinct.

The list of officers assigned to the west side of Lexington Avenue and East 79<sup>th</sup> Street are Sgt. Demarco, PO Morales, PO Saint-Gerard, PO Roman, PO Harris, PO Carmine Semioli, and PO Alex § 87(2)(b) [REDACTED] of the 102<sup>nd</sup> Precinct.

The detail roster did not list any van assignments for the seven officers assigned to PO Stigell’s footpost. Van #5724 was listed as assigned to the seven officers assigned to PO Joyce’s footpost. A review of the entire detail roster was negative for any teams assigned van #8830.

**19<sup>th</sup> Precinct Roll Call** (encl. G52-78)

A review of the 19<sup>th</sup> Precinct Tour 1 and Tour 2 Roll Call on June 9, 2013 revealed no officers assigned to an Anti-Crime Unit. The Roll Calls did not reveal van #8830 in use by any unit.

**Bookings, Arraignments, and Dispositions System (BADs)** (encl.G91-99)

**19<sup>th</sup> Precinct Summonses Log** (encl. G79-84)

A review of the above database and documents was negative for any arrests or summonses issued to a § 87(2)(b) or § 87(2)(b). However, § 87(2)(b) was arrested for resisting arrest by PO Alexander Nevandro of Gang Borough Brooklyn South at 5:40 p.m. The narrative noted that he was blocking the flow of traffic and cursing at other passengers at the East 77<sup>th</sup> Street subway station. His physical and mental condition was listed as apparently normal and no force was listed as used during his arrest.

§ 87(2)(a) 160.50, § 87(2)(b)

§ 87(2)(b)

§ 87(2)(c)

**Civilians CCRB History** (encl. B5-8)

- This is the first CCRB complaint filed by § 87(2)(b) and § 87(2)(b)

**Subject Officers CCRB History** (encl. B1-4)

- There are no substantiated CCRB allegations against the following subject officers:
  - Sgt. Demarco has been a member of the service for 20 years.
  - PO Morales has been a member of the service for six years.
- PO Saint-Gerard has been a member of the service for 10 years and there is one substantiated CCRB allegation against him:
  - In CCRB case number 200509501, the CCRB substantiated an entry allegation against PO Saint-Gerard. In January 2007, the NYPD issued instructions.

**Conclusion**

**Identification of Subject Officers**

§ 87(2)(b) alleged that Sgt. Demarco cursed at him. § 87(2)(b) alleged that Sgt. Demarco called § 87(2)(b) a “fucking spic.” Sgt. Demarco and PO Morales acknowledged interacting with § 87(2)(b). Therefore, the discourtesy and physical force allegations are pleaded against Sgt. Demarco, and physical force, pepper spray, and asp allegations are pleaded against PO Morales.

PO Saint-Gerard acknowledged assisting in apprehending § 87(2)(b). Therefore, a physical force allegation is pleaded against him.

§ 87(2)(b)'s video depicts two black plainclothes officers along with PO Saint-Gerard and PO Harris engaging with § 87(2)(b). In the video, the officer with a white shirt's shield number is

briefly visible and appears as “2555.” A search of the Complaint Tracking System revealed that PO Phillips as the only officer with that shield number. However, his name was not listed in the detail roster, and no officers listed in the detailed roster had shield numbers that closely matched “2555.” Furthermore, PO Phillips stated that he was at a different detail in downtown Manhattan. No officer interviewed could identify the plainclothes officers in the video. Given the large number of commands working within a five-block radius of the incident location, and the amount of officers who responded to the location, the investigation was unable to determine the identity of either plainclothes officer.

§ 87(2)(b) and § 87(2)(b) could not describe the officers who allegedly grabbed § 87(2)(b)'s arm. Therefore, a physical force allegation is pleaded against “officers” of an unknown command.

Because of the effects of the pepper spray, § 87(2)(b) and § 87(2)(b) could not describe the officer in the front passenger’s seat in the van who allegedly used profanity en route to the stationhouse. The SPRINT report did not list which vehicle transported the prisoners. PO Joyce and PO Stigell, who were assigned to different footposts, both claimed to be the driver of the van, and could not identify the other officer or officers in the van with them. PO Stigell claimed to transport the prisoners in van #8830, which was not listed in any detail roster, while PO Joyce was one of seven officers assigned use of van #5724. While § 87(2)(b) and PO Stigell mentioned only two officers in the van with § 87(2)(b) and § 87(2)(b), § 87(2)(b) and PO Joyce stated that there were four or five officers. Given the discrepancies in the statements and vehicle assignments, and without officer descriptions or additional evidence, the investigation could not identify the subject officer. Therefore, the discourtesy allegation is pleaded against “an officer” of an unknown command.

### **Allegations Not Pleaded**

Although § 87(2)(b)'s video depicts PO Saint-Gerard and PO Harris physically engaging with § 87(2)(b), PO Harris’ contact is both brief and minimal, limited to grabbing a hand, before his attention is diverted to the crowd. Therefore, a physical force allegation is not pleaded against him.

§ 87(2)(b) alleged that PO Saint-Gerard nudged her with his forearm in the stomach twice, the second time after she said she was pregnant. However, by her own account, she was standing close to § 87(2)(b) and the other officers and was within close proximity to PO Saint-Gerard’s body, at a distance where he could touch her with his forearm. The investigation determined that PO Saint-Gerard’s nudge was a minimal physical form of crowd control and did not rise to the level of misconduct.

§ 87(2)(b) wiped his mucous on a seatback in the van, and alleged an unidentified officer held his head back against his headrest to prevent him from doing so. The investigation determined that this action was for hygienic purposes and did not rise to the level of misconduct.

§ 87(2)(b) did not return his verification statement to the CCRB and § 87(2)(b) did not cooperate to provide an in-person statement at the CCRB. Because no other civilian witnessed any of the allegations they raised, the relevant physical force and discourtesy allegations are not pleaded.

Absent § 87(2)(b)'s response to any contact attempts or any civilian witness to the incident involving him at the East 77<sup>th</sup> Street subway station, no force allegations are pleaded on his behalf.

### **Investigative Findings and Recommendations:**

#### **Allegation A- Discourtesy: At East 78th Street and Lexington Avenue in Manhattan, Sgt. Joseph Demarco spoke rudely to § 87(2)(b)**

It is undisputed that parade-goers were dispersing en masse at the time of the incident. It is undisputed that § 87(2)(b) was waving his flag in the street. While he denied standing in the middle of the street and did not mention yelling, his account is contradicted by § 87(2)(b) and § 87(2)(b)'s statements, which were consistent with Sgt. Demarco’s, PO Morales, PO Saint-Gerard, and PO Roman’s statements regarding § 87(2)(b)'s behavior. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(b)

§ 87(2)(b) alleged that Sgt. Demarco approached him in the middle of the street and told him to “get the fuck off the street,” which was corroborated by § 87(2)(b) and by § 87(2)(b) who heard a slight variation. Sgt. Demarco denied using profanity and no officer interviewed witnessed this allegation.

§ 87(2)(g)

§ 87(2)(b)

Patrol Guide Procedure 203-09 requires officers to be courteous and respectful in their interactions with civilians (encl. A1). In a stressful street encounter, an officer may be justified in using profanity to accomplish a law enforcement objective. Police Department v. White, OATH Index No. 78667/03 (encl. A2-5).

§ 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

**Allegation B- Offensive Language: At East 78th Street and Lexington Avenue in Manhattan, Sgt. Joseph Demarco made remarks to § 87(2)(b) based upon race.**

§ 87(2)(b) alleged that Sgt. Demarco called § 87(2)(b) a “fucking spic.” Sgt. Demarco denied this. No other civilian or officer witnessed this allegation. § 87(2)(b) did not raise this allegation, and § 87(2)(b) noted the unlikelihood of the comment, stating that most of the officers around were Hispanic men. § 87(2)(g)

**Allegation C- Force: At East 78th Street and Lexington Avenue in Manhattan, Sgt. Joseph Demarco used physical force against § 87(2)(b)**

**Allegation D- Force: At East 78th Street and Lexington Avenue in Manhattan, PO Jonathan Morales used physical force against § 87(2)(b)**

**Allegation E- Force: At East 78th Street and Lexington Avenue in Manhattan, PO Jonathan Morales used pepper spray against § 87(2)(b)**

**Allegation F- Force: At East 78th Street and Lexington Avenue in Manhattan, PO Jonathan Morales struck § 87(2)(b) with an asp.**

It is undisputed that § 87(2)(b) refused to give up his ID and was brought down to the ground. It is undisputed that § 87(2)(b)'s hands were tucked underneath his body. It is undisputed that PO Morales discharged his pepper spray and struck § 87(2)(b) with his asp.

§ 87(2)(b) stated that he brought both hands across his chest to break his fall to the ground, and that Sgt. Demarco's knee in his back prevented him from giving up his hands, which PO Morales ordered him to do. § 87(2)(b) alleged that PO Morales pepper sprayed him six or seven times, and struck him in the thigh and right arm five times in succession. § 87(2)(b) stated that he was frightened after hearing Sgt. Demarco instruct PO Morales to tase him and wiggled his body to remove his arms.

Sgt. Demarco noted that § 87(2)(b) a 5'5" tall, 240-lb man, was strong and heavily built. PO Morales noted that after falling to the ground, only he and Sgt. Demarco were left struggling with § 87(2)(b). PO Morales noted his fear that § 87(2)(b) was attempting to reach for something in his waistband.



underneath his body, which led PO Morales to discharge his pepper spray an unknown number of times. He stated that because the pepper spray was ineffective, he struck § 87(2)(b) once on the leg with his asp.

§ 87(2)(b)'s video shows Sgt. Demarco and PO Morales pushing § 87(2)(b) to the ground. Sgt. Demarco has his knee on § 87(2)(b)'s upper back, and PO Morales is straddling § 87(2)(b)'s lower back. The video shows PO Morales attempting to pull out § 87(2)(b)'s right arm out from underneath his chest before discharging pepper spray several times, and attempting to pull out § 87(2)(b)'s arm afterwards.

§ 87(2)(b)'s medical records revealed diagnoses of a sprain and strain of his wrist, elbow, and forearm, and multiple contusions of his right wrist, forearm, left upper arm, and his right thigh.

Patrol Guide Procedure 203-11 states that an officer must use the minimum force necessary to overcome resistance to effect an arrest (encl. A6-7). Patrol Guide Procedure 212-95 permits the use of pepper spray when an officer reasonably believes it necessary to effect an arrest of a resisting suspect and where physical presence and verbal commands have not been effective (encl. A8-11).

Because § 87(2)(b) was acting disorderly in the street and refused to give up his ID to be summonsed, even walking away from the officers as per § 87(2)(b) the officers had just cause to physically detain him by bringing him to the ground.

PO Morales demonstrated adherence to the scale of escalating force in terms of first issuing directives, then pepper spray, and then finally resorting to use of his asp as necessary. PO Morales demonstrated control and restraint by aiming only for § 87(2)(b)'s leg and arms. Despite the many officers around, the video supports PO Morales' statement that he and Sgt. Demarco were generally alone in struggling with § 87(2)(b) whose large size compounded the level of his resistance.

Although § 87(2)(b) claimed he was unable to free his hands while Sgt. Demarco's knee was in his back, he was able to independently free his hands after he was struck with the asp. Furthermore, that § 87(2)(b) released his hands and was handcuffed soon after being struck strongly suggests that PO Morales' use of the asp was effective in securing § 87(2)(b)'s physical compliance.

§ 87(2)(g)

**Allegation G- Force: At East 78th Street and Lexington Avenue in Manhattan, PO Ted Saint-Gerard used physical force against § 87(2)(b)**

**Allegation H- Force: At East 78th Street and Lexington Avenue in Manhattan, officers used physical force against § 87(2)(b) and § 87(2)(b)**

It is undisputed that officers were instructing the crowd to back up as Sgt. Demarco and PO Morales were attempting to handcuff § 87(2)(b) on the ground, and that § 87(2)(b) and § 87(2)(b) did not comply. It is undisputed that § 87(2)(b) resisted being handcuffed.

When § 87(2)(b) went to pick up her dropped phone within a few feet of § 87(2)(b) PO Saint-Gerard and an unidentified plainclothes officer in a white shirt grabbed her, bringing her against the Starbucks window. § 87(2)(b) stated she did not want to give up her right hand because she was holding onto her purses. She stated that she also did not want to be placed on the ground because it would dirty her clothing, so she "held her feet down." She stated that PO Saint-Gerard grabbed her around the waist and tried to pick her up and swing her side to side. After she was able to hand her purses to § 87(2)(b) or § 87(2)(b) she stated she allowed the officers to grab her right arm to handcuff her.

PO Saint-Gerard only remembered him and the other officers grabbing § 87(2)(b)'s arms.

§ 87(2)(b) stated that while she was struggling with the officers, § 87(2)(b) stood at the edge of the sidewalk continued asking what was happening. § 87(2)(b) added that § 87(2)(b) attempted to pull § 87(2)(b) away from the officers. § 87(2)(b) and § 87(2)(b) stated that unidentified officers then grabbed § 87(2)(b)'s arm.

Patrol Guide Procedure 203-11 states that an officer must use the minimum force necessary to overcome resistance to effect an arrest (encl. A6-7).

§ 87(2)(g)

§ 87(2)(b)

As discussed in the Identification of Subject Officers section, the investigation was unable to identify the subject officer of this allegation. § 87(2)(g)

Investigator:	_____	_____	_____
	Signature	Print	Date
Supervisor:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date